

NOTE: Appearing first is the Full Board summary which is the last meeting of the day. The committees will follow in the order of which time they were conducted. The Dealer Board staff felt it would benefit our readers to have the last meeting of the day appear first on the website.

~ FINAL ~

Meeting Summary
Motor Vehicle Dealer Board
Monday, March 12, 2012

Chairman Rick Holcomb called the Dealer Board meeting to order at 11:59 a.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. The roll was called and there were 16 Board members present. Present were members Andy Alvarez, Ted Bailey, Roy Boswell, Lynn Hooper, Art Hudgins, Brian Hutchens, Ronald Kody, Wanda Lewark, Chip Lindsay, George Pelton, Joe Tate, Jimmy Whitten, Rodney Williams, and Tommy Woodson. (Absent: Matt McQueen, Thomas Moorehead, Kevin Reilly and Sally Woodson). Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Wanda Neely and Frank McCormick represented the Dealer Board. Eric Fiske represented the Attorney General's Office. Alice Weedon was the recording secretary.

PUBLIC COMMENT

There was no public comment.

The January 9, 2012 meeting summary was approved.

STATUTORY COMMITTEE REPORTS

Dealer Practices Committee:

Chairman Tommy Woodson summarized discussions held and actions that were taken during the Committee Meeting.

- **Amera-USA, Inc. and Christian H. Crawford.** The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Christian H. Crawford for alleged violations of VA Code Section(s) 46.2-1575(1) and 46.2-1575(6). Based on due consideration, the Board believes a civil penalty should be assessed against Christian H. Crawford. The Board hereby assesses a \$5,750 civil penalty against Christian H. Crawford and; based on due consideration, the Board believes that Mr. Crawford's dealership should be re-inspected. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Crawford's dealership.

Lynn Hooper seconded. The motion carried unanimously.

- **Ray's Auto Recovery Sales Rental, LLC and Raymond Wilborne.** The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Raymond A. Wilborne and Ray's Auto Recovery Sales Rental LLC for alleged violations of VA Code Section(s) 46.2-1575(1) and 46.2-1575(9). Based on due consideration, the Board believes a civil penalty should be assessed against Raymond A. Wilborne and Ray's Auto Recovery Sales Rental LLC. The Board hereby assesses a \$1,000 civil penalty against Raymond A. Wilborne and Ray's Auto Recovery Sales Rental LLC;. Based on due consideration, the Board believes that Mr. Wilborne's dealership should be re-inspected. The Board hereby mandates that a Motor Vehicle Dealer Board field representative re-inspect Mr. Wilborne's dealership.

Jimmy Whitten seconded. The motion carried unanimously.

- **Marlin Motors, Inc. and Jeffrey H. Fox.** The Board has reviewed and considered the facts and evidence and the report of an informal fact finding conference as prepared by the hearing officer concerning Jeffrey H. Fox and Marlin Motors, Inc. for alleged violations of VA Code Section(s) 46.2-1539, 46.2-1542(B), 46.2-1544, 46.2-1550 (1), 46.2-1575 (2) and 46.2-1575(6). Based on due consideration, the Board believes a civil penalty should be assessed against Jeffrey H. Fox and Marlin Motors, Inc. The Board hereby assesses a \$3,500 civil penalty against Jeffrey H. Fox and Marlin Motors, Inc.; and based on due consideration, the Board believes that successfully completing the dealer-operator course would benefit Mr. Fox in running their dealership. The Board mandates that Mr. Fox successfully complete the dealer-operator course by September 12, 2012. Failure to successfully complete the course by this date will result in a suspension of all licenses and certificates issued to Mr. Fox by the Board until such time Mr. Fox has successfully completed the course.

Joe Tate seconded. The motion carried unanimously.

- **Cars Unlimited and Scotty M. Laughlin.** Based on the evidence and a report of an informal fact finding conference as prepared by a hearing officer, the Motor Vehicle Dealer Board, assessed a \$2,000 civil penalty; and suspended for two years Mr. Laughlin's salesperson's license; salesperson certificate of qualification and independent dealer-operator certificate of qualification; and Mr. Laughlin appealed the Board's decision and requested a formal hearing that was conducted on December 14, 2011; and the Board has reviewed and considered the facts and evidence and the report of a formal hearing as prepared by the hearing officer concerning Scotty M. Laughlin for alleged violations of VA Code Sections 46.2-1506, 46.2-1515, 46.2-1518, 46.2-1537, 46.2-1539, 46.2-1550 and 46.2-1575 (6). Based on due consideration, the Board believes a civil penalty should be assessed against Cars Unlimited and Scotty M. Laughlin. The Board hereby assesses a \$2,000 civil penalty against Cars Unlimited and Scotty M. Laughlin and; based on due consideration, the Board believes that Mr. Laughlin's salesperson license and dealer-operator and salesperson certificates of qualification should be suspended. The Board hereby suspends for two years, Mr. Laughlin's salesperson license; salesperson certificate of qualification and dealer-operator certificate of qualification

Joe Tate seconded. The motion carried unanimously.

Licensing Committee

Chairman Jimmy Whitten summarized discussions held and actions that were taken during the Committee Meeting.

- **Joseph T. Byrum and A-1 Four Wheel Deals, Inc.** The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Joseph T. Byrum for alleged violations of VA Code Section(s) 46.2-1574 and 46.2-1575(4). Based on due consideration, the Board believes no action should be taken against Joseph T. Byrum. The Board hereby takes no further action against Joseph T. Byrum.

Brian Hutchens seconded. The motion carried unanimously.

- **Michael Crutchfield.** The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Michael Crutchfield for alleged violations of VA Code Section(s) 46.2-1575 (6) and 46.2-1575(9). Based on due consideration, the Board believes a civil penalty should be assessed against Michael Crutchfield. The Board hereby assesses a \$1,000 civil penalty against Michael Crutchfield.

Brian Hutchens seconded. The motion carried unanimously.

- **Robert Hillmer, Salesperson.** The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Robert Hillmer for alleged violations of VA Code Section(s) 46.2-1575(1) and 46.2-1575 (13). Based on due consideration, the Board believes that Mr. Hillmer's application for a motor vehicle salesperson's license should be denied. Mr. Hillmer's application for a motor vehicle salesperson's license is denied.

George Pelton seconded. The motion carried unanimously.

- **Hamid R. Mahjor and HRM Auto, LLC.** The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Hamid Mahjor for alleged violations of VA Code Section(s) 46.2-1575(1) and 46.2-1575 (9). Based on due consideration, the Board believes a civil penalty should be assessed against Hamid R. Mahjor. The Board hereby assesses a \$2,000 civil penalty against Hamid R. Mahjor and based on due consideration, the Board believes that all licenses, certificates, and registrations issued by the Board to Mr. Mahjor should be revoked. The Board hereby revokes all licenses, certificates, and registrations issued by the Board to Mr. Mahjor.

Art Hudgins seconded. The motion carried unanimously.

Jeffrey Smelley of Compass systems, Inc. presented two proposals requesting approval to be a pre-certification education provider via the internet and classroom.

It was suggested that a task force composed of board members and dealer association members to be created to discuss Mr. Smelley's proposal. The VIADA would like to be able to present a presentation at the next meeting.

Motion was made by Joe Tate to table this issue until the May meeting so that the task force can meet to discuss this further. Ted Bailey seconded. The motion carried unanimously.

- **TrueCar.** Motion was made by Tommy Woodson that the board believes that TrueCar's current model is not consistent with the law. Dealers paying under these conditions would still be in violation of 46.2-1537.

George Pelton seconded. The motion carried unanimously.

Advertising Committee

Vice-Chairman Tommy Woodson summarized discussions that were held during the Committee Meeting.

- **TrueCar.** Vice-Chairman Tommy Woodson summarized for the Board the discussion held in the committee meeting regarding TrueCar. The following motion was made by Tommy Woodson: The Board believes that the current model offered is not consistent with the current law. If dealers are still paying under these conditions they would still be in violation of 46.2-1537.

Lynn Hooper seconded. The motion carried unanimously.

- **Charles Barker Infiniti, Inc. and Nathan Drory.** The Board has reviewed and considered the facts and evidence and the report of an informal fact-finding conference as prepared by the hearing officer concerning Charles Barker Infiniti, Inc. and Nathan Drory (Dealer Number 418) for alleged violations of VA Code Section(s) 46.2-1535, 46.2-1538, 46.2-1574.and 46.2-1575(6). Based on due consideration, the Board believes no action should be taken against Charles Barker Infiniti, Inc. and Nathan Drory. The Board hereby takes no further action against Charles Barker Infiniti, Inc. and Nathan Drory.

Ted Bailey seconded. The motion carried unanimously.

Transaction Recovery Fund Committee:

Chairman Lynn Hooper summarized discussions held and actions that were taken during the Committee Meeting.

- **Antonio Bunch and Showcase Select Imports, Edward B. Porter and Showcase Select Imports, Ladeisha Williams and Rivera Motors, Inc. and Shaka K. Farrier and Auto Line of Norfolk.** Chairman Lynn Hooper summarized for the Board the discussion held in the committee meeting regarding Antonio Bunch and Showcase Select Imports, Edward B. Porter and Showcase Select Imports, Ladeisha Williams and Rivera Motors, Inc. and Shaka K. Farrier and Auto Line of Norfolk. Based on that discussion and the recommendations in these cases, Mr. Hooper made the following motion: Pursuant to VA Code Section 46.2-1527.1 et. seq. of the Code of Virginia, which is known as the Motor Vehicle Transaction Recovery Fund (“Fund”), the Board has reviewed and considered the claims submitted for payment from the Fund and based on due consideration and recommendation of the hearing officer, the Board believes the following claims should be payable from the Fund:

Antonio Bunch and Showcase Select Imports	\$16,070.61
Edward B. Porter and Showcase Select Imports	\$12,532.41
Ladeisha Williams and Rivera Motors, Inc.	\$20,000.00
Shaka K. Farrier and Auto Line of Norfolk	\$16,517.00

George Pelton seconded. The motion carried unanimously.

OLD BUSINESS

There was no old business

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

NEW BUSINESS FROM THE FLOOR

General Assembly Bills: Bruce Gould indicated that **Senate Bill 421** was adopted by the Virginia General Assembly without a single negative vote and was signed into law by Governor McDonnell and is effective as of July 1, 2012. This bill which makes a number of changes related to the Transaction Recovery Fund (TRF) was the product of a work group that included the Motor Vehicle Dealer Board (MVDB), the Department of Motor Vehicles (DMV); the Virginia Trial Lawyers Association (VTLA); the Virginia Independent Automobile Dealers Association (VIADA); and the Virginia Automobile Dealers Association (VADA). The new law:

- Allows consumers to recover attorney fees against the dealer’s bond. Under current law a consumer who was reimbursed by the dealer’s bond for their loss, had to file a claim against the TRF to recover attorney fees.
- Permits the TRF to drop below the currently mandated \$250,000 balance requirement. This change will help avoid or delay a special assessment being imposed on all dealers to re-fund the Fund.

- Increases from \$20,000 to \$25,000, the maximum claim that can be paid to a single claimant and provides a mechanism to automatically adjust future maximum claim amounts to keep pace with inflation.
- Provides a new mechanism whereby a person who purchases a vehicle in good faith from a dealer who subsequently goes out of business and the title of the vehicle is being held by another entity (floor planner), to obtain the title to the vehicle they purchased.
- Allows DMV to issue a temporary registration to a person who purchases a vehicle from a dealer who has gone out of business and the title is being held by another.

(**HB 171** which was also adopted by the General Assembly and signed by the Governor included the first two points as noted above. The two bills are compatible.)

Temporary Supplemental (off-site) Sales License

Dealers who wish to conduct a sale away from their licensed location must first obtain a Temporary Supplemental License from the MVDB. **HB 235** was adopted by the General Assembly and signed by the Governor and is effective as of July, 1, 2012 and does the following:

- Limits car/truck, motorcycle and recreational vehicle dealers to conducting no more than eight off-site sales in a year and no more than one sale consecutively in the same jurisdiction. Under current law there are no limitations as to the number of these types of sales a dealer may conduct.
- Currently, when a dealer conducts a sale outside their jurisdiction or in an adjacent jurisdiction, the dealer must notify all dealers in the jurisdiction in which the sale is to take place. This bill requires that the notification be made by certified mail and that the regulating agency (MVDB or DMV) receive a list of the dealers notified.

Reminder: Legislation adopted by the 2011 General Assembly will require all dealers to have an internet connection and email address by July 1, 2013.

Executive Director's Report. Bruce Gould indicated that the scanning process is on track and the very soon he will begin the interview process in South West Virginia for the field representative position.

The next meeting will be scheduled for May 14, 2012.

There being no further business to come before the Motor Vehicle Dealer Board, Chairman Holcomb adjourned the meeting at 2:03 p.m.

Meeting Summary
Dealer Practices Committee
Monday, March 12, 2012

Chairman Tommy Woodson called the Dealer Practices Committee meeting to order at 9:01 a.m. in Room 702 of the DMV Headquarters Building at 2300 W. Broad Street in Richmond. Present were Committee members Ted Bailey, Ronald Kody, Chip Lindsay, Joe Tate, Jimmy Whitten and Rodney Williams. (Absent: Matt McQueen, Thomas Moorehead, Kevin Reilly and Sally Woodson). Other Board members present: Art Hudgins, Andy Alvarez, Brain Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Wanda Lewark and George Pelton. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Ann Majors, Frank McCormick and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The January 9, 2012 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Amera-USA, Inc. and Christian H. Crawford.** On August 25, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (having made a material misstatement on an application) and 46.2-1575(6) (having used deceptive acts and practices). Based on the information provided at the conference, the hearing officer recommended that all licenses to sell vehicles in the Commonwealth revoked. Because there were 23 separate acts that were in direct violation of the codes mentioned above, it is further recommended that Mr. Crawford be assessed \$250 for each count, for a total civil penalty of \$11,500.

Michael Williams, attorney for Mr. Crawford and Mr. Crawford were present and Mr. Williams spoke on behalf of his client.

Motion was made by Joe Tate to assess a civil penalty of \$11,500, allow Mr. Crawford to retain his license and complete a satisfactory inspection. Ronald Kody seconded. The motion carried unanimously.

- **Ray's Auto Recovery Sales Rental LLC and Raymond A. Wilborne.** On January 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (having made a material misstatement on an application) and 46.2-1575(9) (having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that Mr. Wilborne attend the Dealer Operator Course. If he fails to attend, then a civil penalty of \$1,000 should be assessed and a suspension of 90 days.

Mr. Wilborne was present and spoke on his own behalf. He stated that he recently completed the dealer-operator course.

Motion was made by Joe Tate to assess a civil penalty of \$1,000 and complete a satisfactory inspection. Ted Bailey seconded. The motion carried unanimously.

- **Marlin Motors, Inc. and Jeffrey H. Fox.** On January 23, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1542(B) (Temporary Registration), 46.2-1544 (Assignment of Title), 46.2-1550 (1) (Use of Dealer Plates), 46.2-1575 (2) (Failure to comply with a written warning) and 46.2-1575(6) (having used deceptive acts and practices). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$7,000. It was also recommended that Mr. Fox attend the Dealer-Operator Course.

Mr. Fox was present and spoke on his own behalf.

Motion was made by Joe Tate to assess a civil penalty of \$3,500 and to complete the Dealer-Operator course within 6 months. Rodney Williams seconded. The motion carried unanimously.

Review and Action: Formal Hearing:

- **Cars Unlimited and Scotty M. Laughlin.** Historical overview leading up to the formal hearing: On July 28, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Sections 46.2-1506 (selling vehicles without a valid salesperson license), 46.2-1515 (failure to display current dealer certificate), 46.2-1518 (display of salesperson's license; notice of termination), 46.2-1537 (failure to have salespersons properly licensed), 46.2-1539 (inspections of vehicles required, in specific, safety inspection requirements), 46.2-1550 (improper use of or permitting the improper use of dealer's license plates) and 46.2-1575 (6) (having used deceptive acts or practices). At the September 12, 2011 Committee and Full Board meeting, the members passed a resolution indicating that a civil penalty of \$2,000 civil penalty and all licenses and certificates issued by the Board to Mr. Laughlin should be suspended for 2 year.

On October 6, 2011, Mr. Randall A. Eads, attorney for Mr. Laughlin, appealed and requested a formal hearing. On December 14, 2011, a formal hearing was conducted to address the alleged violations as mentioned above. Based on the information provided at the hearing, the hearing officer recommended revocation of all licenses and all certificates issued by the Board. The hearing officer also recommended that a civil penalty of \$1,000 be assessed per each violation of the above VA Code Sections, for a total civil penalty of \$7,000 assessed.

Randall Eads, attorney for Mr. Laughlin and Mr. Laughlin were present and both spoke.

Motion was made by Joe Tate to assess a \$2,000 civil penalty with a 2 year suspension of all licenses and certificates. The reason for the Committee's recommendation to modify the hearing officer's recommendation is based on the results of the State Police's decision to suspend for 2 years the inspection stations right to inspect vehicles for selling Mr. Laughlin inspection stickers. Ted Bailey seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 14, 2012.

The meeting adjourned at 10:19 a.m.

Meeting Summary
Dealer Licensing Committee
Monday, March 12, 2012

Chairman Jimmy Whitten called the Dealer Licensing Committee meeting to order in Room 702 at 10:20 a.m., DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members Andy Alvarez, Roy Boswell, Art Hudgins, Brian Hutchens, Wanda Lewark, George Pelton and Joe Tate. (Absent: Sally Woodson) Other Board members present: Rodney Williams, Tommy Woodson, Rick Holcomb, Lynn Hooper, Chip Lindsay, Ted Bailey, Ronald Kody. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The January 9, 2012 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR:

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conferences:

- **Joseph T. Byrum and A-1 Four Wheel Deals, Inc.** On December 15, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(4) (Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business). Based on the information provided at the conference, the hearing officer recommended that Mr. Byrum retain his Salesperson's license.

Mr. Bryum was present and spoke on his own behalf.

Motion was made by Wanda Lewark to accept the hearing officer's recommendation. George Pelton seconded. The motion carried unanimously.

- **Michael Crutchfield and East End Auto Sales, Inc.** On January 25, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(6) (Having used deceptive acts or practices) and 46.2-1575 (9) (Having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$200 for each code violation. It was further recommended that the Board should

reconsider the renewal of Mr. Crutchfield's sales license. Any further code violations on Mr. Crutchfield's part should carry a revocation of his license for a minimum of five (5) years).

Mr. Crutchfield was present and spoke on his own behalf.

Motion was made by Jimmy Whitten to allow Mr. Crutchfield to retain his salesperson license and assess him a civil penalty of \$1,000. Joe Tate seconded. The motion carried unanimously.

- **Robert Hillmer, Salesperson.** On January 18, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (Having made a material misstatement on a renewal application) and 46.2-1575 (13) (Having been convicted of a felony). Based on the information provided at the conference, the hearing officer recommended assessing a civil penalty of \$250 and to fill out a correct application for renewals of his licenses for this year. Once the penalty and correct application have been received, it recommended that Mr. Hillmer is allowed a salesperson license.

Motion was made by Joe Tate to reject Mr. Hillmer's application for a license due to the severity of his violations. George Pelton seconded. The motion carried unanimously.

- **Hamid R. Mahjor and HRM Auto, LLC.** On February 14, 2012, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1575(1) (Having made a material misstatement on a renewal application) and 46.2-1575 (9) (Having been convicted of any criminal act involving the business of selling vehicles). Based on the information provided at the conference, the hearing officer recommended that Mr. Mahjor have his Dealer-Operator Qualification and his license to sell vehicles in the Commonwealth revoked. It is further recommended that he be assessed a civil penalty of \$2,000.

Mr. Mahjor was present and spoke on his own behalf.

Motion was made by Joe Tate to accept the hearing officer's recommendation. George Pelton seconded. The motion carried unanimously.

- **TrueCar and Similar Companies: Do They Meet The Definition of a "Dealer".** At its January 9, 2012 meeting, the Virginia Motor Vehicle Dealer board determined that Virginia dealers paying fees to TrueCar (or any other entity) under the then current pricing model being utilized by TrueCar were in violation of Virginia Code Section 46.2-1537; accordingly, dealers in violation could face regulatory action including assessment of civil penalties and license suspension or revocation. The MVDB directed the Executive Director to investigate the activities of TrueCar and report back to the MVDB at the March meeting.

TrueCar representatives Jim Weiss and Chapman Best presented to the Board a different pricing model which now consists of a set fee that varied from dealer to dealer and would change from time to time. It was not clear as to the criteria employed by TrueCar that would cause a change one reason given was "seasonal".

Motion was made by Jimmy Whitten the current subscription model presented is still tied to sales and should be rejected. Brian Hutchens seconded. The motion carried unanimously.

Motion was made by Jimmy Whitten to seek informal advice from the Attorney's Office on whether TrueCar meets the definition of a dealer. George Pelton seconded. The motion carried unanimously.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The next meeting was scheduled for May 14, 2012.

The meeting adjourned at 11:59 a.m.

Meeting Summary
Advertising Committee
Monday, March 12, 2012

Vice-Chairman Tommy Woodson called the Advertising Committee meeting to order in Room 702 at 12:54 p.m., DMV Headquarters, 2300 West Broad Street, Richmond, Virginia. Present were Committee members Andy Alvarez, Chip Lindsay, George Pelton and Rodney Williams. (Absent: Matt McQueen and Kevin Reilly and Sally Woodson). Other Board members present: Art Hudgins, Brian Hutchens, Roy Boswell, Rick Holcomb, Lynn Hooper, Jimmy Whitten, Joe Tate Wanda Lewark and Ted Bailey. Executive Director Bruce Gould, Peggy Bailey, Frank McCormick, Prin Cowan, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The January 9, 2012 meeting summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

The discussion at the last Board meeting concerning TrueCar and the resulting Guidance Memorandum posted on the MVDB WEB site and article printed in the February edition of Dealer Talk have generated additional questions as to acceptable advertising practices.

The central issue has been payment for "leads". The Board's long standing interpretation of Va Code section 46.2-1537 is that dealers may not pay a third party on a per lead basis. It is clear that an unlicensed individual cannot be paid what is known as a "bird dog" fee. A bird dog is an individual/entity that refers prospective customers to a particular dealership or salesperson for a fee.

Pay per Click (PPC) advertising is employed by Google and others whereby a dealer pays a fee each time an individual "clicks" on a dealer's name within a list of dealership names on a WEB site after having conducted a "search". Bruce Gould indicated that he believed that if clicking on a particular dealer's name merely takes the individual to the dealer's WEB site that is not paying for a lead. Mr. Gould stated that he did not believe this is paying for a lead as the PPC is a means to obtain a better or more visible position within the list of dealers. No information about the individual is passed to the dealer. The third party does not quote a price or provide any guarantees - it merely sends the person conducting the search to the dealer's WEB site. Mr. Gould asked the Board if they agreed with his analysis and conclusions. It was the consensus of the Committee that they agreed with Mr. Gould.

Another scenario Mr. Gould described requires a dealer to pay a set monthly subscription fee and in exchange for that fee the dealer receives a fixed number of leads. Mr. Gould states that it appeared to him that this model would not be acceptable as the dealer is paying on a per lead basis. The Committee, by consensus, agreed with this opinion.

TrueCar Update:

Shortly after the January Board meeting, TrueCar notified their dealer partners that they were moving to a "flat-fee" subscription service. Each dealer received an invoice with a set fee for the months of January, February and March. It appears the set fee varied from dealer to dealer within line-makes and by line-make. (This issue was discussed by the Licensing Committee.)

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

- **Charles Barker Infiniti, Inc. and Nathan Drory.** On November 7, 2011, an informal fact-finding conference was conducted to address the alleged violations of VA Code Section(s) 46.2-1535 (Unless the dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR", denoting a Virginia licensed dealer, shall appear therein), 46.2-1538 (Salesman selling for other than his employer prohibited) and 46.2-1574 (Acts of officers, directors, partners, and salespersons). Based on the information provided at the conference, the hearing officer recommended (1) no penalty for 1535 as Ms. Parker semi-secretly engineered her own advertisement website with no approval of Barker Infinity, (2) no recommendation for 1538 as Ms. Parker's license has been revoked and is facing a criminal investigation by local and federal authorities, (3) \$1,000 civil penalty assessed for violating 1574. The hearing officer also recommended that Mr. Virgil Thornton, Ms. Parker's immediate supervisor, should appear before an informal fact-finding conference to evaluate his culpability with Ms. Parker. His sales license should be reviewed for possible violations of the VA Code, in specific, code section 46.2-1575(6) (having used deceptive practices).

Mr. Drory and Mr. Thornton, General Manager were present and spoke on behalf of Mr. Drory.

Motion was made by George Pelton to take no further action. Rodney Williams seconded. The motion carried unanimously.

The next meeting was scheduled for May 14, 2012.

NEW BUSINESS FROM THE FLOOR

There was no new business from the floor.

The meeting adjourned at 1:28 p.m.

Meeting Summary
Transaction Recovery Fund Committee
Monday, March 12, 2012

Chairman Lynn Hooper called the Transaction Recovery Fund Committee meeting to order at 1:27 p.m. in Room 702 of the DMV Headquarters Building at 2300 West Broad Street in Richmond. Present were Committee members: Andy Alvarez, Ted Bailey, Roy Boswell, Brian Hutchens. (Absent: Matt McQueen, Thomas Moorehead and Kevin Reilly). Other Board members present: Rodney Williams, Tommy Woodson, Rick Holcomb, Jimmy Whitten, Chip Lindsay, Joe Tate, Wanda Lewark, George Pelton and Ronald Kody. Executive Director Bruce Gould, Peggy Bailey, Prin Cowan, Frank McCormick, Ann Majors and Wanda Neely represented the Dealer Board. Eric Fiske represented the Attorney General's office.

The January 9, 2012 summary was approved.

PUBLIC COMMENT

There was no public comment.

OLD BUSINESS

OLD BUSINESS FROM THE FLOOR

There was no old business from the floor.

NEW BUSINESS

Review and Action: Informal Fact-Finding Conference Results:

- **Antonio Bunch and Showcase Select Imports.** On February 9, 2011, Showcase completed and signed a Buyer's Order to sell Mr. Bunch a 2003 white Mercedes Benz for \$15,493.81 and indicated a deposit of \$4,500.00 leaving a balance owed of \$10,996.61. Mr. Bunch never saw this Buyer's Order and never signed nor agreed to the provisions regarding the purchase. He had agreed to purchase the vehicle for approximately \$14,995.00, plus title, taxes and tags with a \$4,000.00 down payment and that he would finance the remaining balance. During the negotiations for the purchase of the vehicle, Janice Parker salesperson for Showcase indicated to Mr. Bunch they had the title to the vehicle and that they would process the paperwork with DMV to have the vehicle registered in his name. The Buyer's Order falsely represented he had made a deposit of \$4,500, when in fact no down payment had been made and he had agreed to bring in \$4,000 as a down payment.

Mr. Bunch had taken a loan out with Navy Federal Credit Union for \$10,996.61 for the balance due on the purchase price. Showcase agreed to send the necessary paperwork to the lender (Navy Federal Credit Union) in order to get the loan proceeds for the purchase of the vehicle. After Antonio Bunch had provided the loan proceeds of \$10,996.61 to Showcase, they did not deliver the vehicle. When Mr. Bunch returned on February 18, 2011 he discovered that the dealership had closed. Showcase never provided Mr. Bunch with any vehicle and he is being held liable to Navy Federal Credit Union for the loan proceeds in the amount of \$10,996.61 in connection with the purchase.

On April 13, 2011, Antonio Bunch contacted the Motor Vehicle Dealer Board (Board) indicating he was a victim of Showcase and inquired on how he could recover his funds or the vehicle he purchased. Antonio Bunch obtained legal counsel (John Gayle, Jr. Esquire) in order to pursue Showcase civilly in court. In July, 2011 a Warrant in Debt was filed in the Newport News General District Court for actual and constructive fraud, violations of the VCPA and Breach of Contract. On August 26, 2011, the Newport News General District Court awarded Antonio Bunch a default judgment against Showcase Exclusive Imports, Inc. in the amount of \$15,000 with an interest rate of 6% from the date of 2/9/11 until paid, plus \$74.00 costs and \$5,000.00 in attorney fees.

On September 1, 2011, John Gayle, Esquire on behalf of his client emailed the Board staff the judgment that was awarded to his client requesting to file a claim against the Fund. On September 27, 2011, John Gayle, Esquire also submitted the required documentation to the Dealer Board for consideration of reimbursement from the Fund, for the maximum recovery of \$20,000 on his client's claim.

On September 28, 2011, the Dealer Board staff acknowledged receipt of Antonio Bunch's possible claim against the Fund and advised counsel that the Dealer Board had been made aware of numerous claims against Showcase and that pursuant to §46.2-1527.5 payment may not be made until the end of the requisite license period (April 30, 2012). After this period, if the aggregate of claims against Showcase exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimant's and paid from the Fund in proportion to the amounts of their unpaid judgments.

It appears to staff that Antonio Bunch's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Va. Mr. Bunch had purchased a 2003 Mercedes Benz from Showcase; he provided the loan proceeds from Navy Federal Credit Union in the amount of \$10,996.61 to Showcase for the purchase. Showcase never provided Mr. Bunch with the vehicle and he is being held liable for the loan to Navy Federal Credit Union.

On February 13, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Bunch be considered for payment of \$16,070.61 from the Fund.

Given the above facts and code sections governing the Fund, if the aggregate of claims does not exceed the \$100,000, the Dealer Board's staff is requesting the Recovery Fund Committee and full Board approve Antonio Bunch's claim in the amount of \$16,070.61. This amount is based on the loan proceeds in the amount of \$10,996.61, court costs of \$74 and the attorney fees of \$5,000.00. However, payment from the Fund would not be issued until the end of the relevant license or registration period [April 30, 2012].

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Brian Hutchens seconded. The motion carried unanimously.

- **Edward B. Porter and Showcase Select Imports.** On December 11, 2010, Edward Porter purchased a 2006 Infiniti from Showcase Exclusive Imports, Inc. (Showcase). The sales price of the vehicle was \$28,987.00 plus a processing fee of \$320.00 making the total selling price of \$29,307.00. In addition, Showcase collected \$2,198.02 state sales tax; \$57.97 dealer's business tax and \$63.25 title/registration fee making the total amount due of \$31,626.24. Mr. Porter made a down payment of \$2,826.24 for the purchase, leaving a balance due in the amount of \$28,800.00 and traded-in a 2004 BMW with a loan balance owed to MAC Federal Credit Union (MAC) in the amount of \$21,587.41. Janice Parker, licensed salesperson/loan officer for Showcase contacted MAC for confirmation regarding the pay-off amount on the trade-in as well arranged financing for the purchase. Showcase completed the Buyer's Order and submitted documentation to MAC for the approval of financing the

purchase of the 2006 Infiniti and indicated that they would pay-off the existing loan on the 2004 BMW to MAC in the amount of \$21,587.41. Mr. Porter took possession of the 2006 Infiniti, with the understanding that Showcase would be paying off his loan on the trade-in. On December 13, 2010, Edward Porter's lien holder (MAC Federal Credit Union) submitted a check to Showcase Imports in the amount of \$28,800.00 for the purchase of the 2006 Infiniti.

From January 4th, thru 13th, 2011 MAC had spoken with Janice Parker in the finance department at Showcase regarding the pay-off on the loan for the 2004 BMW that had been traded-in. In which, Janice Parker indicated to MAC that the check would be there within the week. However, on January 31, 2011 MAC received a check from Janice Parker at Showcase Imports in the amount of \$970.00 to be applied to the loan on the trade-in with a request from Ms. Parker for a new payoff amount and a copy of the titled. [MAC provided a new payoff quote of \$21,018.89 good through March 15, 2011] On February 9, 2011 the check from Showcase was returned for insufficient funds. MAC contacted Mr. Porter and advised him that the loan on his trade-in had not been satisfied by Showcase and they had not received the paperwork on the Infiniti he had purchased. This leaves Mr. Porter responsible for both loans. Due to the circumstances, MAC granted Mr. Porter a 60 day extension on his loan on the 2004 BMW for the month of January and February 2011.

On or about February 28, 2011, Mr. Porter read the newspaper article regarding Showcase Select Imports being under investigation for selling vehicles without titles, failing to deliver titles, and failing to pay-off liens on trade-ins and there were numerous victims that had been affected by the fraudulent activity of Showcase. Mr. Porter then contacted the DMV Investigative Services regarding the vehicle he purchased and the vehicle he had traded-in. Mr. Porter's next loan payment was due May 15, 2011. In order to maintain his credit, Mr. Porter continued to make his loan payments on the vehicle he traded-in as well as on the vehicle he purchased.

In late July of 2011, Virgil Williams, Jr. the owner of Showcase contacted Mr. Porter and indicated he did not have the funds to pay off the BMW and he was willing to let Mr. Porter have his vehicle back. Virgil Williams indicated he could pick the vehicle up at Williams Auto at 5304 Jefferson Ave., Newport News, Virginia. Mr. Porter was unable to continue making (2) loan payments and notified MAC of the location of the BMW. MAC retrieved the vehicle and moved it to auction in order to give Mr. Porter a smaller balance owed and to keep his credit from reflecting repossession. On or about August 30, 2011, the 2004 BMW was sold at auction for \$10,800.00 leaving Mr. Porter liable for the remaining balance of the loan in the amount of \$12,462.41, which he has continued making payments on. Eventually, the DMV Investigative services was able to obtain the proper paperwork regarding the vehicle Mr. Porter purchased and it has now been titled/registered in Georgia with a lien to MAC.

On November 8, 2011, Mr. Porter filed a Warrant in Debt in the Newport News General District Court against Showcase Imports for the dealer's failure to pay-off his trade-in. On December 8, 2011, the Newport News General District Court awarded Edward Porter judgment against Showcase in the amount of \$12,462.41.

On December 27, 2011, Mr. Porter contacted the Dealer Board staff and hand delivered a copy of the Warrant in Debt, copy of the Buyer's Order and an affidavit of facts. The Dealer Board staff reviewed and requested a letter of verification from his lien holder (MAC) in regards to the amount owed on the trade-in at the time of the transaction and the amount still owed on the vehicle after it was sold at auction. Staff then provided Mr. Porter with the Judgment Claim Request form (MVDB13) and instructed him to return the form with an attested copy of the judgment order, 30-days after the judgment becomes final. On December 29, 2011, Mr. Porter submitted to the Dealer Board staff a letter from MAC regarding the pay-off that was given at the time of the transaction and the purchase order showing that Showcase would be paying \$21,587.41 to MAC.

On December 30, 2011, the Dealer Board staff acknowledged Mr. Porter's possible claim against the Fund and that the Board had already received multiple claims against Showcase. Pursuit to Va. Code §46.2-1527.5 payment from the Fund made not be made until after the requisite license period (April 30, 2012). After this period, if the aggregate of claims exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments. [Via facsimile/cc: Karen Walker, collections officer for MAC]. On January 10, 2012, Mr. Porter submitted to the Dealer Board the Judgment Claim request form with an attested copy of the final judgment order requesting consideration of payment from the Fund.

It appears to staff that Edward Porter's claim meets the requirement of the Va. Code §46.2-1527.3, judgment was awarded in a court of competent jurisdiction of the Commonwealth of Va. Mr. Porter purchased a 2006 Infinite and in connection with the purchase traded-in a 2004 BMW with a lien to MAC Federal Credit Union. Showcase indicated they would pay-off the loan on the trade-in and failed to do so. In July, 2011 the lien holder retrieved the vehicle and sold it at auction for \$10,800.00. Mr. Porter is being held liable for the loan difference owed of \$12,462.41 on the vehicle he traded-in as well as making payments on the vehicle he purchased.

Given the above facts and code sections governing the Fund, the Dealer Board staff is requesting the Recovery Fund Committee and full Board for approval of Mr. Porter's claim in the amount of \$12,532.41. This amount is based on the judgment amount of \$12,462.41 plus \$70.00 in court costs. However, payment from the Fund would not be issued until the end of the relevant license or registration period (April 30, 2012) and if the aggregate of claims against the licensee or registrant exceeds the \$100,000, a total of \$100,000 shall be prorated among the claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments.

On February 13, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Porter be considered for payment of \$12,532.41.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. The motion carried unanimously.

- **Lakeisha Williams and Rivera Motors, LLC.** On August 27, 2008, Lakeisha Williams went to Rivera Motors, LLC located at 881 E. Little Creek Rd., Norfolk, Virginia and entered into negotiations with Rivera for the purchase of the 2002 BMW, completed a Buyer's Order indicating the base price of the vehicle as \$32,500.00 and included a license fee of \$4.00, a title fee of \$10.00, title tax of \$975.00, a dealer's business license tax of \$65.00, and an on-line filing fee of \$25.00 for a balance due at settlement of \$33,579.00. Ms. Williams indicated she would be financing the full amount for the purchase of the vehicle through Navy Federal Credit Union. On August 28, 2008, Ms. Williams returned to the Rivera's dealership to pick up the vehicle she had purchased. Upon inspecting the vehicle, Ms. Williams noticed that the side was damaged and requested that Rivera fix the damage. On October 6, 2008, Ms. Williams received a call from Rivera Motors notifying her that her vehicle had been repaired and ready to be picked up. Upon starting the vehicle, the dash board indicator lights highlighted additional problems with the vehicle. Jose Rivera, owner of Rivera Motors assured Ms. Williams that the vehicle would be taken to Checkered Flag BMW for repairs.

On October 23, 2008, Ms. Williams received a call from Rivera Motors notifying her that the vehicle was again repaired and ready for pick up. Approximately, one mile from the dealership the check engine light came on and Ms. Williams returned the vehicle to Rivera Motors. On October 30, 2008, the vehicle was returned to Ms. Williams and she was assured by Rivera Motors that the repairs were completed. Toni Marie Ramirez, a licensed salesperson for Rivera provided Ms. Williams with an invoice from Checkered Flag. [The invoice was for diagnostic work on the vehicle, not repairs]. As of

January 28, 2009, the 2002 BMW continued to have problems with the navigation system, the engine light was on, and there were leaks in the exhaust and coolant systems. On February 4, 2009, Ms. Williams returned the 2002 BMW to Rivera Motors and informed Jose Rivera that she did not want the vehicle back until it was properly repaired. All along Ms. Williams continued to make payments.

On May 18, 2009, Ms. Williams went to Rivera Motors to check on the repairs on the 2002 BMW and notice that the license plates for her vehicle were in a box on the floor. When Ms. Williams inquired about her license plates, Toni Marie Ramirez indicated that they had been removed when the vehicle was taken to Checkered Flag for repairs. Ms. Williams called Checkered Flag to ascertain the status of her vehicle. She identified her vehicle by the vehicle identification number and was informed that they did not have her vehicle. She then contacted the police department to report the vehicle missing and she was informed that the vehicle had been sold. Jose Rivera, owner of Rivera Motors had taken the 2002 BMW in for repairs and had indicated that the vehicle was being serviced at Checkered Flag. Instead of repairing and returning the vehicle, Rivera Motors sold Ms. Williams' 2002 BMW to another party retaining the proceeds from the sale.

On September 23, 2011, Dwain Alexander II, Esquire on behalf of Ms. Williams filed a Warrant in Debt in the Norfolk General District Court against Rivera Motors LLC and Jose Rivera in the amount of \$25,000.00. On November 9, 2011, the Norfolk General District Court awarded Lakeisha Williams a default judgment against Rivera Motors, LLC and Jose Rivera in the amount of \$25,000.00 plus \$59.00 in costs. Ms. Williams has paid off her loan for the 2002 BMW and has been denied possession of the vehicle. Therefore, due to the statues governing the Fund the Dealer Board staff recommended the Recovery Fund Committee and full Board approve Ms. Williams claim in the amount of \$20,000.00, which is the maximum allowed pursuant to §46.2-1527.5.

On February 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Ms. Williams' request for \$20,000.00 should be granted.

Note:

Currently, the Fund has paid \$74,135.59 in claims against Rivera Motors, LLC and Jose A. Rivera. [\$100,000.00-\$74,135.59 =\$25,864.41 balance- \$20,000.00 on Williams =\$5,864.41 remaining balance of responsibility of Fund.

Mr. Dwayne Alexander spoke on behalf his clients Lakeisha Williams and Shaka K. Farrier.

Motion was made by Andy Alvarez to accept the hearing officer's recommendation. Art Hudgins seconded. The motion carried unanimously.

- **Shaka K. Farrier and Auto Line of Norfolk, Inc.** On April 16, 2009, Shaka K. Farrier went to Auto Line of Norfolk, Inc. (Auto Line) to purchase a vehicle. Mr. Farrier identified a 2006 Dodge Charger on the internet. Auto Line indicated that they owned the 2006 Dodge Charger, but it was not on their dealership lot and they would have to pick the vehicle up for delivery for him. Mr. Farrier and Auto Line then negotiated the sale of the 2006 Dodge Charger for a base price of \$25,206.14 plus a processing fee of \$399.00 making a total vehicle price of \$25,605.14.

In connection with the purchase, Mr. Farrier wanted to trade-in his 2003 Mitsubishi Eclipse and was given a net trade-in of \$4,500.00 resulting in a balance of \$21,105.14. The agent for Auto Line completed a Buyer's Order for the purchase and included additional fees and taxes totaling \$894.86 reflecting a total selling price of \$22,000.00. Mr. Farrier obtained a loan from Navy Federal Credit Union (NFCU) in the amount of \$22,249.00 and provided Auto Line of Norfolk a check in the amount

of \$22,000.00 for the purchase of the 2006 Dodge Charger. Mr. Farrier retained the 2003 Mitsubishi, the trade-in, pending the delivery of the 2006 Dodge Charger.

After paying Auto Line for the 2006 Dodge Charger, Mr. Farrier repeatedly contacted Auto Line to determine when the dealership would deliver his vehicle. On or about June 8, 2009, Auto Line indicated that they could obtain a different vehicle, but not the 2006 Dodge Charger, that was originally contracted for between the dealer and Mr. Farrier. At which time, Mr. Farrier requested a refund of the money he had paid in connection with the purchase of the 2006 Dodge Charger. On June 25, 2009 Auto Line by a bank transfer paid \$5,582.00 to Navy Federal Credit Union for payment on the note and partial payment of the \$22,000.00 due to Mr. Farrier. However, Auto Line failed and refused to reimburse the remaining balance of \$16,418.00.

On September 23, 2011, Dwain Alexander, II, Esquire on behalf of Mr. Farrier filed a Warrant in Debt in the Norfolk General District against Auto Line of Norfolk, Inc. and Robert Wheeler in the amount of \$22,000.00 for (1) Violations of VCPA; (2) Fraud; (3) Constructive Fraud, and (4) Breach of Contract and Unjust Enrichment. Dwain Alexander, II, Esquire on behalf of Shaka Farrier submitted to the Dealer Board the documentation for consideration of his client's possible claim against the Motor Vehicle Transaction Recovery Fund (Fund). On November 9, 2011, the Norfolk General District Court awarded Shaka Farrier a default judgment against Auto Line of Norfolk and Robert Wheeler in the amount of \$16,418.00 plus \$99.00 in costs. Unfortunately, Mr. Farrier is being held liable to NFCU on the balance of the loan for a vehicle that was never delivered to him. Therefore, it was recommended by staff that the Recovery Fund Committee and full Board approve Mr. Farrier's claim in the amount \$16,517, which is based on the judgment amount (\$16,418.00) and costs in the amount of (\$99.00).

On February 21, 2012, an informal fact-finding conference was conducted and based on the information provided at the conference, the hearing officer recommended that Mr. Farrier's request for \$16,517.00 should be granted.

Motion was made by Art Hudgins to accept the hearing officer's recommendation. Ted Bailey seconded. The motion carried unanimously.

Note:

[August 30, 2010] The surety bonding company (Western Surety) has exhausted their \$50,000 liability for claims against Auto Line of Norfolk, Inc. There is a possibility; more claims may come against the Fund regarding the fraudulent activities of Auto Line.

NEW BUSINESS FROM THE FLOOR

The next meeting was scheduled for May 14, 2012.

The meeting adjourned at 1:46 p.m.